that the plaintiff has been induced to purchase relying on the representation arising from every contract of bailment, that the bailee will be true to his promise to keep the goods in his possession. But is this satisfactory? Through how many transfers, and for what period of time, will the court apply this rule and say that the statute has not been running in favor of the defendant although it has for the benefit of his assignees? Moreover, the inquiry suggests itself, after an act of conversion, can a subsequent demand and refusal constitute a fresh conversion?

Regarding the action as one of detinue, the decision is no more satisfactory; for the action, if detinue *sur trover*, must be based on the demand and refusal, and the difficulty suggested above recurs, namely, that since the goods have been the plaintiff's the defendant has never had them. If the gist of the action is detinue *sur bailment*, then the contract from the breach of which the action arises is that made with the plaintiff's assignor, but for the assignee to maintain the action in his own name is indefensible, on principle. Besides, as was said before, it is clear that the court considered that the right which the plaintiff is seeking to enforce is not that derived from the assignment, but one which is original with himself.

LECTURE NOTES.

[The following note was prepared by Professor Gray and read by him to the third-year class in connection with the case of *Wilkinson* v. *Duncan*, p. 661 of Vol. V. of the Cases on Property.]

REMOTENESS OF SEPARABLE GIFTS. — Since *Griffith* v. *Pownall*, 13 Sim. 393 (1843), it has been settled that if the persons to whom a devise or legacy is made are described as a class, but the amount of the gift to each member of the class is in no way affected by the gift to any other, then the gifts are separable, and some may be valid though others are too remote. Thus a legacy of $1,000 to each of the testator's grandchildren who reaches twenty-five is a valid gift to all the grandchildren who are alive at the testator's death, although it is not a good gift to those who are then unborn.

The case of *Wilkinson* v. *Duncan*, 30 Beav. 111 (1861), has generally been cited as an illustration of this principle, but without sufficient attention to its facts. In that case property was given upon trust for G for life, and on G's death to such of his children, and in such manner, as he should appoint. G appointed $2,000 to each of his daughters on reaching twenty-four. He had four daughters, three over and one under three years of age. (See 7 Jur. N. S. 1182.) It is not distinctly said that none of the daughters were alive at the time of the creation of the power, but as no reference was made to such a fact, and as the power was created twenty-three years before its execution, it may be assumed that none of the daughters were then born. Sir John Romilly, M. R., held that the gifts to those daughters who were over three years old at their father's death were not too remote.

Let us consider the case first as if it were a direct gift; that is, suppose the testator had given $2,000 to each one of G's daughters who should reach twenty-four, and as the gifts to the daughters are independent, let us consider separately the gift to a particular daughter, whom we will call X. In order that X shall take, what must happen? X must be born and she must reach twenty-four years of age. It is not certain that she will be born until just before the death of her

parent, and should that be the case the time for her gift may not fall within the required limits; the gift is therefore too remote. If X is alive at the time of the testator's death, then the only thing to happen is her reaching twenty-four, and as that must happen, if at all, in her lifetime, and she is alive at the testator's death, the gift to her cannot be too remote.

Let us now look at the case as it really arose, a gift under an exclusive power to G to appoint among his children, and an appointment by his will of independent sums to those of his daughters who should reach twenty-four, the daughters being some more and some less than three years at the time of his death. Of course the daughters under three could not take; could those more than three years old take? As the gifts are separable, the fact that there were or might be other daughters who could not take would not invalidate the gifts to those who were over three years of age. But were those gifts in themselves good?

If, to use the common phrase, the words of the appointment are read into the instrument creating the power, then we shall have the case we have just been considering, and the legacy to the daughters would be bad, except to those living when the power was created.

This phrase, however, is not in all respects correct. The word "daughters" should have given to it the meaning which the donee gave to it; that is, of certain individual girls, having in fact certain names and certain ages, *e.g.* A who is six years old, B who is five years old, C who is four years old, D who is two years old. But it must be observed that the being of these ages is not a condition which the donee has attached to the appointments. As the intention of the donee was to appoint to particular persons, those persons' names may be read into the creating instrument, but the qualities of those persons cannot be read into the creating instrument as conditions for the gift, unless the donee has made them so. Therefore if we call an appointee unborn at the time of the creation of the power X, it was not then certain that the gift to X, in the case we are considering, might not take effect beyond the required limits.

If the appointment had been to such of the donee's daughters as should be three years old at his death, upon their reaching twenty-four, the gift would have been good, because at the creation of the power no legatee answering the required description could possibly take at too remote a time.

Wilkinson v. *Duncan* therefore would seem to be wrong, and also, *a fortiori*, *Von Brockdorff* v. *Malcolm*, 30 Ch. D. 172, which professes to rest upon it; and the attempt in the *Addendum*, Gray, Perp., p. xxxiii, to support the latter case fails.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

ADMIRALTY — STATUTORY LIABILITY OF OWNER. — A steam-propeller was wrecked and abandoned to the underwriters as a total loss. It was subsequently taken in tow by a wrecking-master, but sank within twenty-four hours, and one